

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TONY CHANNELL,

Plaintiff,

v.

**NUTRITION DISTRIBUTION,
LLC, d/b/a ANABOLIC
XTREME, DESIGNER
SUPPLEMENTS, INC., et al.,**

Defendants.

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CASE NO. 2:07-CV-1103

**DEFENDANT, DPS NUTRITION, INC.'S,
RESPONSE TO PLAINTIFF'S MOTION TO STRIKE ITS
VOLUNTARY JOINDER IN NOTICE OF REMOVAL
AND RESPONSE TO PLAINTIFF'S MOTION TO REMAND**

COMES NOW the Defendant, DPS Nutrition, Inc. (hereinafter "DPS"), and responds to the Plaintiff's Motion to Strike its Voluntary Joinder in Notice of Removal and Plaintiff's Motion to Remand as follows:

1. In Response to Plaintiff's Motion to Strike its Voluntary Joinder and Plaintiff's assertions DPS's filing of its Voluntary Joinder in Notice of Removal constituted an admission Designer Supplements, Inc. did not have DPS's written consent for removal at the time the Notice of Removal was filed, the facts clearly show the opposite. On December 17, 2007, the attorney for DPS confirmed in writing to the attorney for Designer Supplements, Anthony Higgins, she would agree to the removal of this case to Federal Court. (See December 17, 2007, Correspondence, attached as Exhibit 1.)

Attorney for DPS also sent a second communication indicating DPS's consent to the removal to Higgins on December 18, 2007, and indicated she had reviewed the proposed removal documents prepared by Higgins. (See December 18, 2007 email, attached as Exhibit 2.) Given these two separate written consents from DPS to Designer Supplements, it is patently clear Designer Supplements had written consent to removal from DPS before the Notice of Removal was filed. Plaintiff's Motion to Strike DPS's formal written Voluntary Joinder should be denied.

2. In response to Plaintiff's Motion to Remand, Plaintiff again argues DPS failed to join in or agree to the removal process. The evidence attached clearly shows DPS had given written consent to the removal prior to the removal being filed.

DPS also joins in the response to the Plaintiff's Motion to Remand being filed by Designer Supplements.

Respectfully submitted this 23rd day of January, 2008.

/s/ Kathy R. Davis

Kathy R. Davis, Esq. ASB-6173-A26K
Attorney for Defendant
DPS Nutrition, Inc.

OF COUNSEL:

Carr, Allison
100 Vestavia Parkway
Birmingham, AL 35216
(205) 822-2006
(205) 822-2057 (fax)

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing instrument was electronically filed on this the 23rd day of January, 2008, by uploading the same to the Court's CM/ECF system which will send a Notice of Electronic Filing upon all counsel of record.

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S. Anthony Higgins, Esq.
Attorney for Designer Supplements, Inc.
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Andy Clausen, Esq.
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Anabolic Resources, LLC
c/o Richard Smith
2440 W. 12th Street, Suite 3
Tempe, AZ 85281

STG Investors, LLC
c/o Your Entity Solution, LLC
6628 Sky Pointe Drive, Suite 290
Las Vegas, NE 89131

/s/ Kathy R. Davis
Of counsel

EXHIBIT 1



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Kathy R. Davis, Esq.
Direct Dial (205) 949-2953
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December 17, 2007

By Facsimile at 334-215-7101

S. Anthony Higgins, Esq.
Nix, Holtsford, Gilliland, Higgins & Hitson, P.C.
Post Office box 4128
Montgomery, AL 36103

RE: Tony Channell v. Nutrition Distribution, LLC, et al.
In the Circuit Court of Covington County, Alabama
Civil Action No : CV-2007-90047

Dear Tony:

Per our discussions, this law firm will be representing DPS Nutrition, Inc. in connection with the above styled matter pending in the Circuit Court of Covington County, Alabama. It is my understanding you will be representing Designer Supplements, Inc. and it is your desire to remove this case to the Middle District of Alabama.

DPS Nutrition, Inc. will agree to participate in the removal. Please forward a copy of the proposed removal documents for our review prior to filing.

Yours very truly,


Kathy R. Davis

KRD/ds

EXHIBIT 2

From: Kathy Davis
Sent: Tuesday, December 18, 2007 9:05 AM
To: 'Tony Higgins'
Subject: RE: Channell v. Nutrition Distribution

Attachments: Jointer Notice of Removal.DOC

I am in agreement with the removal documents. Please change the certificate of service to show my name as attorney for DPS Nutrition, Inc. I have attached a joinder to your notice of removal. Please provide final copies of all documents which are filed.

Kathy

From: Tony Higgins [<mailto:thiggins@nixholtsford.com>]
Sent: Monday, December 17, 2007 3:07 PM
To: Kathy Davis
Subject: Channell v. Nutrition Distribution

Kathy:

It was good speaking with you this morning. As requested, I am attaching the removal pleadings I plan on filing on Wednesday. Please take a look at them and let me know if you have any suggestions or changes. I am still trying to get the consent of the other served Defendant, STG Investors, LLC. In looking at AlaCourt last week, it is my understanding that Nutrition Distribution, LLC, and Anabolic Resources, LLC, have not been served.

I look forward to working with you on this matter. Please let me know if you have any questions.

Tony Higgins

Nix Holtsford Gilliland Higgins & Hitson, P.C.

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Montgomery, AL <st1:PostalCode w:st="on">36106

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